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IN THE

Supreme Court of the United States

OCTOBER TERM 1979
NO. 79-1595

WILLIAM HARRIS SHARPE,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA DISTRICT COURT OF APPEAL, FIRST DISTRICT

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TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1-2
JURISDICTION	2-3
STATEMENT OF THE CASE	3-8
REASONS WHY THE WRIT SHOULD NOT BE GRANTED	9-22
CONCLUSION	22

TABLE OF CITATIONS

	PAGE
Abel v. United States, 362 U.S. 217 (1960	17
Delaware v. Prouse, 440 U.S. 648 (1979)	13
Godbee v. State, 224 So.2d 441 (Fla. 2d DCA 1969)	20
Hester v. United States, 265 U.S. 57 (1924)	17
Johnson v. State, 99 Fla. 1311, 128 So. 853 (1930)	10
Mackiewicz v. State 114 So.2d 684 (Fla. 1959)	19
Marshall v. Barlow's, Inc., 436 U.S. 307 (1978)	16
McNamara v. State, 357 So.2d 410 (Fla. 1978)	21
Noeling v. State, 40 So.2d 120 (Fla. 1949)	19
Pederson v. State, 373 So.2d 367 (Fla. 1 DCA 1979), *cert. denied*, ____ So.2d ____ (Fla. 1980)	16

Ross v. Moffitt,
417 U.S. 600 (1974) 3-6

Sharpe v. State,
370 So.2d 42 (Fla. 1 DCA 1979),
cert. denied, 381 So.2d 769
(Fla. 1980) 2, 3,
15, 16

Sligh v. Kirkwood,
65 Fla. 123, 61 So. 185 (1913),
aff'd, 237 U.S. 52 (1915) 10

South Dakota v. Opperman,
428 U.S. 364 (1976) 20

State v. Bailey,
120 Ariz. 399, 586 P.2d 648
(Ct. App. 1978) 15

*Stephenson v. Department of
Agriculture and Consumer Services*,
329 So.2d 373 (Fla. 1 DCA 1976),
aff'd. 342 So.2d 60 (Fla. 1976),
appeal dismissed, 434 U.S. 803
(1977) 10-13,
21

United States v. Brignoni-Ponce,
422 U.S. 873 (1975) 20

United States v. Edwards,
441 F.2d 749 (5th Cir. 1971) 17, 18-
19

United States v. Martinez-Fuerte,
428 U.S. 543 (1976) 20

United States v. Mendenhall,
48 U.S.L.W. 4575 (1980) 20-21

United States v. Ortiz,
422 U.S. 891 (1975) 20

United States v. Schaffer,
461 F.2d 856 (9th Cir. 1972),
cert.denied, 409 U.S. 81 (1972) 15

United States v. Walton,
538 F.2d 1348 (8th Cir. 1976),
cert.denied, 429 U.S. 1055
(1976) 19

OTHER AUTHORITIES

28 U.S.C. § 1257(3) 2

Rule 19, *Rules of the Supreme Court of the United States* 3

Section 570.15(1), Florida Statutes (1977) 9

Section 570.15(1)(a), Florida Statutes (1977) 10

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Respondent prays that this Court will deny the petition for writ of certiorari heretofore filed seeking review of the opinion rendered by the First District Court of Appeal.

OPINIONS BELOW

On the 24th day of October, 1977,

the trial court entered an order denying Petitioner's motion to suppress and amended motion to suppress. On the 17th day of April, 1979, the First District Court of Appeal affirmed Petitioner's judgment and sentence. *Sharpe v. State*, 370 So.2d 42 (Fla. 1 DCA 1979), *cert. denied*, 381 So.2d 769 (Fla. 1980). The instant petition followed.

JURISDICTION

The jurisdiction of this Court is sought to be invoked by Petitioner under 28 U.S.C. § 1257(3). It is Respondent's position that the issues raised here are not such as should be reviewed by this Court. Petitioner has not presented this

Court with a substantial federal constitutional question. Review by writ of certiorari is a matter of sound judicial discretion, and will be granted only where there are special and important reasons therefore. *See* Rule 19, *Rules of the Supreme Court of the United States; Ross v. Moffitt,* 417 U.S. 600 (1974).

STATEMENT OF THE CASE

Respondent will rely upon the facts as recited in the opinion rendered by the First District Court of Appeal in *Sharpe v. State,* 370 So.2d 42 (Fla. 1 DCA 1979), *cert.denied,* 381 So.2d 769 (Fla. 1980) wherein the Court stated in part as follows:

The facts are that Sharpe stopped his rental truck at an agricultural inspection station on an interstate highway, but when told by a uniformed inspector that he wished to inspect the vehicle, Sharpe advised that his girlfriend had the key to the lock securing the rear door of the truck and she was driving another vehicle ahead of him on the highway. The inspector asked Sharpe what was in the truck and Sharpe answered that he had some furniture from his girlfriend's apartment. The inspector then requested Sharpe to pull his truck over to the dock and wait. At one point, the inspector suggested that if Sharpe couldn't get the truck open, and if his girlfriend didn't come back, that he could get a hammer for Sharpe to break the lock. Sharpe stated it was a new lock that he didn't want to break. He indicated his girlfriend

would come back. At no time did Sharpe refuse to allow the truck to be searched.

Some minutes later the inspectors noticed that the back of the truck was open and Sharpe was standing next to it. One of the inspectors went over and looked inside the truck and observed furniture and an old motorcycle. Shortly after he entered the back of the truck to look further, he heard another inspector call that Sharpe was gone. Sharpe was seen running across an open field. At that point all inspection of the vehicle was stopped. The inspectors contacted the highway patrol and the sheriff's office. Shortly thereafter, Sharpe was taken into custody. A deputy drove the truck from the inspection station to the jail, where the truck was searched and the cannabis discovered.

Id. at 43. In addition, Nick C. Law, Sr., an agricultural inspector for the Department of Agriculture for the State of Florida, testified regarding Petitioner's flight from the agricultural inspection station (T 66). Mr. Law stated in part as follows:

> Mr. Shope got up in the truck to inspect it and see what was on it, and I was standing on the ground outside, and another truck come up, or something, but anyway, got my attention, and I had to go back inside, and I went inside to take care of that, and while I was sitting there I looked around and Mr. Sharpe was running towards the fence, and I ran out the door, and when I got out the door he had already went over about a five or six foot fence. Ever how high that fence

> is out there, and I just hollered at him, and he paused for a moment and kept on going. Then I went out to the truck and told Mr. Shope that he had left and run to the woods, and I went on back in the station and called the Sheriff's department.

(T 66). Upon hearing the testimony adduced during the hearing held on Petitioner's motion to suppress and amended motion to suppress and upon hearing argument of counsel, the trial court ruled as follows:

> On the authority part of the Department of Agriculture to stop, I think we all agree that is not unconstitutional. After the stop I don't find there was any unlawful detention. I think it was a reasonable amount of time to hold him. They would have the

> right to stop and detain long enough to obtain a search warrant. The RV vehicle, I did not go along with the defense argument on this. I accept the position that the position that the vehicle was abandoned by him leaving it out there at the inspection station. That the subsequent re-uniting at the jail does not give him the standing to come back in and to demand that it not be searched. I think once he has abandoned it out there and they brought it in, the fact that he then is at the jail does not require a search warrant, under the circumstances of this case. This is my position, and I will deny the motion.

(T 110-111).

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

Petitioner objects to a warrantless inspection conducted at an agricultural inspection station on an interstate highway by agricultural inspectors of the Department of Agriculture and Consumer Services pursuant to Section 570.15(1), Florida Statutes (1977) and the subsequent retrieval of contraband contained therein by law enforcement officials.

It is beyond peradventure that "[t]he protection of a large industry constituting one of the great sources of the state's wealth and therefore directly or indirectly affecting the welfare of so great a portion of the population of the state is affected

to such an extent by public interest as to be within the police power of the sovereign. [Citations omitted]." *Johnson v. State*, 99 Fla. 1311, 128 So. 853, 857 (1930). *See also, Sligh v. Kirkwood*, 65 Fla. 123, 61 So. 185 (1913), *aff'd*, 237 U.S. 52 (1915). Agricultural inspectors of the Department of Agriculture and Consumer Services have the authority under Section 570.15(1)(a), Florida Statutes (1977) to stop and inspect *all* trucks, motor vehicles, and trailers other than private passenger automobiles and vehicles bearing an RV license tag. In *Stephenson v. Department of Agriculture and Consumer Services*, 329 So.2d 373 (Fla. 1 DCA 1976), *aff'd*, 342 So.2d 60 (Fla.

1976), *appeal dismissed* for want of a substantial federal question, 434 U.S. 803 (1977), the Supreme Court of Florida held that said inspections are necessary in order that the Department of Agriculture and Consumer Services carry out its responsibilities relating to disease control, fruit and vegetable grading, and other similar matters required by law. In *Stephenson v. Department of Agriculture and Consumer Services, supra,* the First District Court of Appeal opined and the Supreme Court of Florida agreed that:

> "Unless such a vehicle stops at the station, it cannot be determined by the inspectors whether or not it is being used for transportation of 'any food product, any agricultural, horticul-

> tural, or livestock product; or any article or product with respect to which any authority is conferred by law on the department.' Upon stopping, the majority of operators of such vehicles will probably have no objection to such an inspection and will consent to same; but as provided in the statute, if access is refused, the vehicle may not be searched without the inspector obtaining a search warrant or without a legal basis for search without a warrant pursuant to established law. Such in no way impairs appellants' right to be free from unreasonable search and seizure, their right to due process of law, or their right to equal protection of the law. We do not find that it violates any constitutional right of appellant."

Stephenson v. Department of Agriculture and Consumer Services, supra, 342 So.2d at

62. In *Delaware v. Prouse*, 440 U.S. 648 (1979), this Court stated that its holding did not "cast doubt on the permissibility of roadside truck weigh-stations and inspection checkpoints, at which some vehicles may be subject to further detention for safety and regulatory inspection than are others." *Id.* at 663, n.26. Petitioner's contention that the agriculture inspectors must limit their inspection of a type truck driven by Petitioner to a few questions and a plain view search is unrealistic and fails to contemplate the impracticality of such limitation. The Petitioner was driving a two-ton Ryder Rental Truck with a large fully enclosed cargo area. Inspector Shope testified

that it was during the height of the fruit and tomato season and that such rental trucks are frequently used to haul fruit and tomatoes. The nature of the truck completely precludes any plain view inspection and therefore, it was necessary for the inspector to look inside the truck's cargo area in order to perform his duty to inspect for agricultural products. There is no other way to accurately determine if such a truck is being used in the transportation of agricultural products. As a result, Petitioner's detention at the road-guard station was reasonable, especially in light of Petitioner's indication that his girlfriend was ahead of him in a car and would probably return with the key to

the lock on the truck. *See United States v. Schaffer*, 461 F.2d 856 (9th Cir. 1972), *cert.denied*, 409 U.S. 81 (1972); *State v. Bailey*, 120 Ariz. 399, 586 P.2d 648 (Ct. App. 1978).

Petitioner's contention that the inspection of his truck was without his valid consent is without merit. As noted by the First District Court of Appeal, "[a]t no time did Sharpe refuse to allow the truck to be searched." *Sharpe v. State*, *supra*, at 43. *See e.g.*, (T 43). In addition, it is Respondent's position that Petitioner opened the truck of his own volition with no inspectors in his immediate vicinity and made no objection to the inspector entering the back of the truck.

See e.g., (T 56). As a result, it is Respondent's position that Petitioner consented to the inspection of his truck. *Cf. Marshall v. Barlow's, Inc.*, 436 U.S. 307, 314 (1978) and *Pederson v. State*, 373 So.2d 367 (Fla. 1 DCA 1979), *cert.denied*, ____ So.2d ____ (Fla. 1980) with *Sharpe v. State, supra.*

Next, Petitioner's contention that the search of the truck at the jail was an unlawful search and seizure is without merit. *Sub judice*, the trial court specifically found that Petitioner abandoned his truck at the roadguard station (T 111). The First District Court of Appeal agreed. *Sharpe v. State, supra*, at 45. The testimony of Agricultural Inspectors

Shope and Law supports said finding. *See* (T 39-41; 58-59; 66-67). In *Hester v. United States*, 265 U.S. 57 (1924), this Court held that revenue officers had properly retrieved several containers of illegally distilled whiskey which they had seen the defendant discard in an open field as he was attempting to flee from the federal officers. In *Abel v. United States*, 362 U.S. 217 (1960), this Court upheld the seizure of contents from a wastepaper basket found in the defendant's hotel room immediately after he had paid his bill and had vacated the room. Similarly, in *United States v. Edwards*, 441 F.2d 749 (5th Cir. 1971), a highway patrolman attempted to stop the defendant

for speeding only to have the defendant increase his speed to over 100 miles an hour. In attempting to make a turn, the defendant's car left the road and became enlodged in a ditch. Edwards jumped out of the car, left the engine running and the lights burning, and fled on foot. The officer took the keys and upon opening the trunk found three gallons of illegal whiskey. Edwards was arrested the following day at his place of employment. Judge Roney, writing for the Court, stated, in part, as follows:

> Defendant's right to Fourth Amendment protection came to an end when he abandoned his car to the police, on a public highway, with engine running, keys in the ignition, lights on, and fled on

> foot. At that point defendant could have no reasonable expectation of privacy with respect to his automobile.

Id. at 751. *See also, United States v. Walton,* 538 F.2d 1348, 1354 (8th Cir. 1976), *cert. denied,* 429 U.S. 1055 (1976). Flight is usually considered to exist when the accused departs from the vicinity of the crime. *Mackiewicz v. State,* 114 So.2d 684, 689 (Fla. 1959); *Noeling v. State,* 40 So.2d 120, 121 (Fla. 1949). Based upon the foregoing, it is Respondent's position that the record sustains the finding of the trial court and the First District Court of Appeal that Petitioner fled from the agricultural inspection station and as a result, intended to abandon his truck.

The subsequent impoundment of the abandoned truck was reasonable and the seizure of the evidence contained therein, not improper. *See South Dakota v. Opperman*, 428 U.S. 364 (1976); *Godbee v. State*, 224 So.2d 441 (Fla. 2d DCA 1969).

Finally, it should be noted that the instant case involves an agricultural inspection, *United States v. Brignoni-Ponce*, 422 U.S. 873, 887 (1975) (Rehnquist, J., concurring), which is a routine inspection of certain vehicles required as a condition of road use. *United States v. Ortiz*, 422 U.S. 891, 897 (1975), n.3. The stop and inspection of Petitioner's vehicle is consistent with *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). *See*

Stephenson v. Department of Agriculture and Consumer Services, 342 So.2d 60, 62 (Fla. 1976) (Hatchett, J., concurring). Moreover, the subsequent retrieval of the contraband contained therein was reasonable, especially in light of Petitioner's flight from the agricultural inspection station and Petitioner's abandonment of the vehicle. Petitioner enjoyed no reasonable expectation of privacy with respect to his automobile subsequent thereto. Consequently, the trial court's denial of Petitioner's motion to suppress and amended motion to suppress was proper and properly sustained by the record and affirmed by the First District Court of Appeal. *See United States v. Mendenhall*, 48 U.S.L.W.

4575, 4579 (1980); *McNamara v. State*, 357 So.2d 410 (Fla. 1978).

CONCLUSION

Based upon the foregoing, supported by the authorities cited in the argument and jurisdictional portions of this Brief, Respondent respectfully requests that this Court decline to assume jurisdiction in this case and deny Petitioner's application for issuance of a writ of certiorari.

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CERTIFICATE OF SERVICE

I, RAYMOND L. MARKY, *Counsel for Respondent*, and a member of the Bar of the United States, hereby certify that on the ____ day of June, 1980, I served copies of the Respondent's Brief in Opposition to the Petition for Writ of Certiorari on Mark J. Kadish, Esq., of Garland, Nuckolls, Kadish, Martin & Catts, P.C., at 1012 Candler Building, 127 Peachtree Street, Atlanta, Georgia 30303, *Counsel for Petitioner*, by a duly addressed envelope with postage prepaid.

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